

Justin Fok, Esq., CA Bar No. 242272
Law Offices of Jean D. Chen
2107 N. First Street, Suite 400
San Jose, CA 95131
Telephone: (408) 437-1788
Facsimile: (408) 437-9788
Email: jfok@jclawoffice.com

Attorney for Plaintiff
Payam Rabiei

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
COMPLAINT

Payam Rabiei,

Plaintiff,

v.

Michael Chertoff, Secretary of the
Department of Homeland Security,
Emilio T. Gonzalez, Director of United States
Citizenship and Immigration Services,

Defendants.

Case No.

C07 06373 RMW

**PLAINTIFF'S ORIGINAL COMPLAINT
FOR WRIT IN THE NATURE OF
MANDAMUS & DECLARATORY
JUDGMENT UNDER 28 U.S.C. § 1361**

Immigration Case

Plaintiff, Payam Rabiei, by and through his attorney of record, opens this lawsuit against the Defendants and will show this Court the following:

1. Plaintiff, Payam Rabiei, brings this case to compel action on the delayed processing of his I-485, *Application to Register Permanent Residence or Adjust Status*. This case remains within the jurisdiction of the Defendants who have improperly delayed and withheld action on these cases to Plaintiff's detriment.

PARTIES

2. Plaintiff, Payam Rabiei, is a resident of Sunnyvale, CA, which is within the jurisdiction of this Court. Payam Rabiei is the derivative applicant of an I-485 application which has been submitted to the United States Citizenship and Immigration Services.

3. Defendant, Michael Chertoff, is the Secretary of the Department of Homeland Security (DHS), and this action is brought against him in his official capacity. Defendant Chertoff is responsible for enforcement of the Immigration and Nationality Act and its related regulations, which provide for the processing of I-485 immigrant petitions.

4. Defendant, Emilio T. Gonzalez, is the Director of the USCIS, an agency within DHS, and this action is brought against him in his official capacity. Defendant Gonzalez is generally charged with the overall administration of immigration benefits and services, including I-485 immigrant petitions.

JURISDICTION

5. Jurisdiction in this case is proper under 28 U.S.C. §§ 1331 and 1361, 5 U.S.C. §§ 551, *et seq.* and 701, *et seq.*, and 28 U.S.C. § 2201 *et seq.* Relief is requested pursuant to said statutes. Additionally, attorney fees and costs will be sought pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*

VENUE

6. Venue is proper in this honorable Court, pursuant to 28 U.S.C. §1391(e), in that Plaintiff may request a hearing on the matter in the district where Plaintiff resides.

INTRADISTRICT ASSIGNMENT

7. This lawsuit should be assigned to the San Jose Division of this court because a substantial part of the event or omission which give rise to this lawsuit occurred in Santa Clara County.

EXHAUSTION OF REMEDIES

8. Plaintiff has exhausted his administrative remedies. Plaintiff has supplied the USCIS with documents that clearly establish eligibility to register as a permanent resident. As will be demonstrated by the evidence, Plaintiff has followed up with numerous inquiries and requests to

the pertinent administrative agencies attempting to expedite his delayed case.

CAUSE OF ACTION

9. Plaintiff, as the derivative applicant, properly filed an I-485, *Application to Register Permanent Residence or Adjust Status*, with the USCIS based on his spouse's approved I-140 petition (**EXHIBIT 1**). The I-485 application, all supporting documentation, and the \$385 filing fee were received by the California Service Center on September 29, 2004 (**EXHIBIT 2**).

10. On October 27, 2005, Plaintiff submitted his fingerprints at the USCIS San Jose Application Support Center (**EXHIBIT 3**).

11. On March 21, 2007, Plaintiff again submitted his fingerprints at the USCIS San Jose Application Support Center (**EXHIBIT 4**).

12. On June 1, 2007, Plaintiff appeared before the USCIS San Jose Sub Office for an Infopass appointment. Plaintiff was informed that his I-485 application was pending due to the FBI name check (**EXHIBIT 5**).

13. The Defendants' actions have gone well beyond the expected 6 months processing time for the adjudication of an employment-based I-485 application (See California Service Center I-485 cases posted November 14, 2007) (**EXHIBIT 6**).

14. It has been over three years since Plaintiff submitted his I-485 case with the USCIS on September 29, 2004.

15. Defendants have failed to adhere to their own processing times and procedures.

16. Plaintiff has submitted sufficient information to the USCIS for it to complete adjudication of his I-485 application.

17. The Defendants have contracted out the name check for Plaintiff's case to the Federal Bureau of Investigation.

18. But for the pending name check, Plaintiff would receive approval for his I-485 application.

19. Plaintiff has been greatly damaged by the failure of Defendants to act in accordance with their duties under the law. Specifically:

(a) Plaintiff has been unable to obtain legal permanent residence and thus cannot travel

1 or work without restriction. He must spend additional time and pay additional filing
2 fees each year in order to work and travel legally.

3 (b) Plaintiff is unable to accrue time to be eligible for naturalization as a citizen of the
4 United States, thus delaying his obtainment of the rights and privileges enjoyed by
5 citizens of the United States.

6 (c) Plaintiff must wait to make major life decisions until his legal permanent residence
7 petition is resolved, thus causing his undue stress and anxiety.

8 20. Defendants, in violation of 28 U.S.C. § 1361, have failed to complete the processing of
9 Plaintiff's I-485, a duty delegated to them by law.

10 21. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 706(1), are
11 unlawfully withholding action on Plaintiff's cases, and have unreasonably delayed action on
12 Plaintiff's cases.

13 22. Defendants, in violation of the Administrative Procedures Act at 5 U.S.C. § 555(b), are
14 unlawfully delaying action on Plaintiff's cases and have failed to complete the adjudicative
15 functions delegated to them by law within a reasonable time.

16 **PRAYER**

17 23. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
18 respectfully prays that the defendants be cited to appear, and that upon due consideration, the
19 Court enter an order:

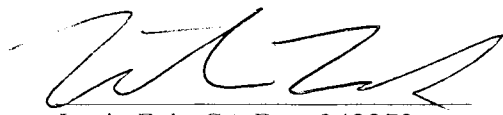
20 (a) requiring the USCIS to complete adjudication of Plaintiff's I-485 Application within
21 60 days of receiving the Court's Order;

22 (b) awarding reasonable attorney's fees pursuant to the Equal Access to Justice Act; and

23 (c) granting such other relief at law and in equity as justice may require.
24

25 Dated: December 10, 2007

Respectfully Submitted,

26 
27

Justin Fok, CA Bar: 242272
Attorney for Plaintiff
28

EXHIBIT LIST

- Exhibit 1: Plaintiff's spouse's I-140 approval notice
- Exhibit 2: Plaintiff's I-485 Receipt Notice
- Exhibit 3: Plaintiff's fingerprint appointment notice and biometrics processing stamp dated October 27, 2005
- Exhibit 4: Plaintiff's fingerprint appointment notice and biometrics processing stamp dated March 21, 2007
- Exhibit 5: Infopass appointment notice
- Exhibit 6: I-485 processing dates posted November 14, 2007 from the California Service Center

Exhibit 1

THE UNITED STATES OF AMERICA

RECEIPT NUMBER WAC-05-003-55243		CASE TYPE I140 IMMIGRANT PETITION FOR ALIEN WORKER
RECEIPT DATE October 5, 2004	PRIORITY DATE December 26, 2001	PETITIONER INTERVIDEO INC
NOTICE DATE December 28, 2004	PAGE 1 of 1	BENEFICIARY A97 880 148 HUNG, HSIN LING
INTERVIDEO INC C/O LILY TRAN 46430 FREMONT BLVD FREMONT CA 94538		Notice Type: Approval Notice Section: Mem of Profession w/Adv Deg, or of Exceptn'l Ability Sec.203(b)(2)

Courtesy Copy: Original sent to: CHANG, CHARLENE S

This courtesy notice is to advise you of action taken on this case. The official notice has been mailed to the attorney or representative indicated above. Any relevant documentation included in the notice was also mailed as part of the official notice.

The above petition has been approved. The approved petition will be stored in this office. If the person for whom you are petitioning is or becomes eligible to apply for adjustment of status, he or she should contact the local INS office to obtain Form I-485, Application for Permanent Residence. A copy of this notice should be submitted with the application, with appropriate fee, to this Service Center. Additional information about eligibility for adjustment of status may be obtained from the local INS office serving the area where he or she lives, or by calling 1-800-375-5283.

If the person for whom you are petitioning decides to apply for a visa outside the United States based upon this petition, the petitioner should file Form I-824, Application for Action on an Approved Application or Petition, with this office to request that we send the petition to the Department of State National Visa Center (NVC).

The NVC processes all approved immigrant visa petitions that require consular action. The NVC also determines which consular post is the appropriate consulate to complete visa processing. It will then forward the approved petition to that consulate.

This courtesy copy may not be used in lieu of official notification to demonstrate the filing or processing action taken on this case.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



Exhibit 2

Department of Homeland Security
 U.S. Citizenship and Immigration Services

I-797C, Notice of Action 0916

THE UNITED STATES OF AMERICA

RECEIPT NUMBER WAC-05-003-54788		CASE NUMBER I485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE September 29, 2004	PRIORITY DATE	APPLICANT A97 880 149 RABIEI, PAYAM
NOTICE DATE October 6, 2004	PAGE 1 of 1	
CHARLENE S. CHANG LAW OFFICE OF CHARLENE S. CHANG RE: PAYAM RABIEI 2623 AUGUSTINE DR SUITE 236 SANTA CLARA CA 95054		Notice Type: Receipt Notice Amount received: \$ 385.00 Section: Derivative adjustment

Receipt notice If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at uscis.gov.
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1 800 375 5283.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

To Hsin Ling

1 pg only

10/11/04 AC

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
 CALIFORNIA SERVICE CENTER
 P. O. BOX 30111
 LAGUNA NIGUEL CA 92607-0111
 Customer Service Telephone: (800) 375-5283



Exhibit 3



ASC Appointment Notice

NOTICE DATE
09/22/2005

CASE TYPE I485 Application to Register Permanent Resident or Adjust Status	SOCIAL SECURITY NUMBER	USCIS A# A097880149
APPLICATION NUMBER WAC0500354788	CODE 3	SERVICE CENTER WSC
		PAGE 1 of 1

PAYAM RABIEI
[REDACTED]
PALO ALTO, CA 94301

U.S. CITIZENSHIP & IMMIGRATION SERVICES
XTC/AN/JOSE
CODE
USCIS QA REVIEW BY
ON OCT 27 2005
USCIS QA REVIEW BY
ON OCT 27 2005



To process your application, the U. S. Citizenship & Immigration Services (USCIS) must capture your biometrics.

PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.

If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below.

RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW AND FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER	DATE AND TIME OF APPOINTMENT
USCIS SAN JOSE 122 CHARCOT AVE. SAN JOSE, CA 95131	10/27/2005 9:00 AM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR BIOMETRICS TAKEN, YOU MUST BRING:

- 1. THIS APPOINTMENT NOTICE** and
- 2. PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, your biometrics may not be taken.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

U. S. Citizenship & Immigration Services (USCIS) cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

USCIS SAN JOSE
122 CHARCOT AVE.
SAN JOSE, CA 95131

APPLICATION NUMBER 1
1485 - WAC0500354788



If you have any questions regarding this notice, please call 1-800-375-5283.

WARNING!

Due to limited seating availability in our lobby area, only persons who are necessary to assist with transportation or completing the biometrics worksheet should accompany you.

If you have open wounds or bandages/casts when you appear, the USCIS may reschedule your appointment if it is determined your injuries will interfere with taking your biometrics.

Exhibit 4

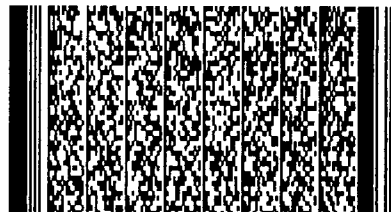


ASC Appointment Notice

APPLICATION NUMBER WAC0500354788	NOTICE DATE 2/21/2007
CASE TYPE I485 Application to Register Permanent Resident or Adjust Status	SOCIAL SECURITY NUMBER TCR
USCIS A# A097880149	CODE 1
SERVICE CENTER WSC	PAGE 1 of 1

PAYAM RABIEI
c/o CHARLENE S. CHANG
LAW OFFICE OF CHARLENE S. CHANG
2620 AUGUSTINE DR SUITE 236
SANTA CLARA, CA 95054

ON
TENTATIVE QA REVIEW BY
MAR 21 2007



To process your application, the U. S. Citizenship & Immigration Services (USCIS) must capture your biometrics.
PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.
IF YOU FAIL TO APPEAR AS SCHEDULED, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.

APPLICATION SUPPORT CENTER

USCIS SAN JOSE
122 CHARCOT AVE.
SAN JOSE, CA 95131

PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

DATE AND TIME OF APPOINTMENT

03/21/2007
1:00 PM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR BIOMETRICS TAKEN, YOU MUST BRING:

- 1. THIS APPOINTMENT NOTICE** and
- 2. PHOTO IDENTIFICATION.** Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, your biometrics may not be taken.

CELL PHONES, CAMERAS, OR OTHER RECORDING DEVICES ARE NOT PERMITTED.

REQUEST FOR RESCHEDULING

- ☐ Please reschedule my appointment. Upon receipt of your request, you will be provided a new appointment notice. Make a copy of this notice for your records, then mail the original with your request to USCIS SAN JOSE, 122 CHARCOT AVE., SAN JOSE, CA 95131

APPLICATION NUMBER 1

I485 - WAC0500354788



If you have any questions regarding this notice, please call 1-800-375-5283.

WARNING!

Due to limited seating availability in our lobby area, only persons who are necessary to assist with transportation or completing the biometrics worksheet should accompany you.

If you have open wounds or bandages/casts when you appear, the USCIS may reschedule your appointment if it is determined your injuries will interfere with taking your biometrics.

Exhibit 5



Name: Payam Rabiei

Appointment Question about case

Type:

Confirmation SNJ-07-13387

No.:

Appointment June 1, 2007

Date:

**Authentication 177cc
Code:**

**Appointment 8:30
Time: AM**

Location: 1887 MONTEREY ROAD, San Jose, CA 95112; LOBBY

**This is your Confirmation
Number:**



**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
71719**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**
- **NOTE: Cell phones that have camera features are not permitted in the building. Food and drinks are not permitted in the waiting room. In order to facilitate easy and swift entrance, you are advised to keep handbags and metal objects to a minimum by leaving such items at home or with a person who will remain outside the building.**

Exhibit 6

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U.S. Citizenship and Immigration Services California Service Center Processing Dates Posted November 14, 2007

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can check the status of your case online.

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

Service Center Processing Dates for **California Service Center** Posted November 14, 2007

Form	Title	Classification or Basis for Filing	Processing Timeframe
I-90	Application to Replace Permanent Resident Card	Initial issuance or replacement	July 29, 2006
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	Initial issuance or replacement of a Form I-94	3 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Visa to be issued abroad	2 Months
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Change of	2 Months

		status in the U.S.	
I-129	Petition for A Nonimmigrant Worker	H-1B - Specialty occupation - Extension of stay in the U.S.	2 Months
I-129	Petition for A Nonimmigrant Worker	H-2A - Temporary workers	15 Days
I-129	Petition for A Nonimmigrant Worker	H-2B - Other temporary workers	30 Days
I-129	Petition for A Nonimmigrant Worker	H-3 - Temporary trainees	2 Months
I-129	Petition for A Nonimmigrant Worker	E - Treaty traders and investors	2 Months
I-129	Petition for A Nonimmigrant Worker	L - Intracompany transfers	30 Days
I-129	Petition for A Nonimmigrant Worker	Blanket L	2 Months
I-129	Petition for A Nonimmigrant Worker	O - Extraordinary ability	2 Months
I-129	Petition for A Nonimmigrant Worker	P - Athletes, artists, and entertainers	2 Months
I-129	Petition for A Nonimmigrant Worker	Q - Cultural exchange visitors and exchange visitors participating in the Irish Peace process	2 Months
I-129	Petition for A Nonimmigrant Worker	R - Religious occupation	2 Months
I-129	Petition for A Nonimmigrant Worker	TN - North American Free Trade Agreement (NAFTA) professional	2 Months
I-129F	Petition for Alien Fiance(e)	K-1/K-2 - Not yet married - fiance and/or dependent child	April 29, 2007
I-130	Petition for Alien Relative	U.S. citizen filing for a spouse, parent, or child under 21	6 Months
I-130	Petition for Alien Relative	U.S. citizen filing for an unmarried son or daughter over 21	January 17, 2003
I-130	Petition for Alien Relative	U.S. citizen filing for a married son or daughter over 21	April 30, 2001
I-130	Petition for Alien Relative	U.S. citizen filing for a brother or sister	April 30, 2001
I-130	Petition for Alien Relative	Permanent resident filling for a spouse or child under 21	January 01, 2005
I-130	Petition for Alien Relative	Permanent resident filling for an unmarried son or daughter over 21	February 07, 2005
I-131	Application for Travel Document	All other applicants for advance parole	3 Months
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	Readmission after deportation or removal	6 Months
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	All other special immigrants	January 17, 2007
I-485	Application to Register Permanent Residence or to Adjust Status	Employment-based adjustment applications	6 Months
I-526	Immigrant Petition By Alien Entrepreneur	For use by an entrepreneur who wishes to immigrate to the United States	6 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change of status to H or L dependents	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Change status to the F or M academic or vocational student categories	3 Months

I-539	Application to Extend/Change Nonimmigrant Status	Change Status to the J exchange visitor category	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	All other change of status applications	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of stay for H and L dependents	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for F or M academic or vocational students	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	Extension of Stay for J exchange visitors	3 Months
I-539	Application to Extend/Change Nonimmigrant Status	All other extension applications	3 Months
I-612	Application for Waiver of the Foreign Residence Requirement	Application for a waiver of the 2-year foreign residence requirement based on exceptional hardship or persecution	March 06, 2007
I-751	Petition to Remove the Conditions on Residence	Removal of lawful permanent resident conditions (spouses of U.S. citizens and lawful permanent residents)	6 Months
I-765	Application for Employment Authorization	Based on a request by a qualified F-1 academic student. [(c)(3)]	11 Weeks
I-765	Application for Employment Authorization	Based on a pending asylum application [(c)(8)]	30 Days
I-765	Application for Employment Authorization	Based on a pending I-485 adjustment application [(c)(9)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for Honduras/Nicaragua [(c)(19), (a)(12)]	11 Weeks
I-765	Application for Employment Authorization	Based on TPS for El Salvador [(c)(19)(a)(12)]	11 Weeks
I-765	Application for Employment Authorization	All other applications for employment authorization	11 Weeks
I-817	Application for Family Unity Benefits	Voluntary departure under the family unity program	April 13, 2007
I-824	Application for Action on an Approved Application or Petition	To request further action on an approved application or petition	6 Months
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors)	6 Months
I-829	Petition by Entrepreneur to Remove Conditions	Removal of lawful permanent resident conditions (immigrant investors) based on PL107-273	September 10, 1997

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